

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION
3883 RUFFIN ROAD
SAN DIEGO, CALIFORNIA 92123



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2014-0005-R5
UNNAMED TRIBUTARY TO SERRANO CREEK

CITY OF LAKE FOREST
LAKE FOREST CIVIC CENTER

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Lake Forest (Permittee) as represented by Debra Rose.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on January 17, 2014, that the Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located within and near an unnamed tributary to Serrano Creek, in the City of Lake Forest, County of Orange, State of California; Latitude 33.65884, Longitude -117.679016; U.S. Geological Survey 7.5-minute map El Toro quadrangle, Section 11, Township 6 south, Range 8 west, San Bernardino meridian; Assessor's Parcel Number 104-132-84.

The project is located south of Commercentre Drive, east of Bake Parkway, west of Serrano Creek, in the City of Lake Forest. The site can be accessed from Interstate 5 by exiting Bake Parkway and heading east onto Bake Parkway. After 3.3 miles, head east onto Commercentre Drive. After 0.6 miles, head south onto Indian Ocean Drive. The project site is beyond the current terminus of Indian Ocean Drive.

PROJECT DESCRIPTION

The project is limited to stream impacted associated with the Lake Forest Civic Center project. The overall project includes the development of the Lake Forest Civic Center on approximately 7.3 acres of a 9.0-acre site. A portion of an unnamed tributary on-site will be filled in order to accommodate the construction of a community center, council chambers/performing arts theater, city hall, and associated parking facilities.

The project site contains an unnamed perennial stream, tributary to Serrano Creek, and an ephemeral stream, tributary to the on-site perennial stream. An existing storm drain outlet provides perennial surface flow through the project area before leaving the site through an existing culvert beneath Serrano Creek Trail and enters Serrano Creek to the southeast of the project site.

The development will result in permanent impacts to the northern segment of the perennial stream and the entirety of the on-site ephemeral stream. The existing storm drain will be extended approximately 437 linear feet beneath the development area to a new storm drain outlet at a constructed retaining wall which will form the downstream boundary of the filled development area.

The new storm drain outlet will be constructed at the head of a new stream channel which will be created immediately adjacent to the existing perennial stream. The new storm drain outlet will incorporate a splitter box, which will passively split perennial flows evenly between a new created stream channel and the avoided portion of the existing stream. The splitter box may require routine maintenance to perform as designed.

The new stream will be created along a sparsely vegetated area east of the existing perennial stream through limited grading with mechanical equipment such as skid steer loaders and/or backhoes, and will extend approximately 361 linear feet before reconnecting to the perennial stream on-site before emptying into Serrano Creek. A series of 12 drop structures consisting of un-grouted rock-rip will be installed across the new stream channel to accommodate the elevation difference between the proposed storm drain outlet and the confluence of the new stream with the existing perennial stream. In addition to the creation of the new stream and associated riparian vegetation on-site, the avoided southern portion of the existing perennial stream will be enhanced through the removal of non-native vegetation and preserved as a part of the project.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: AMPHIBIANS – Pacific treefrog (*Hyla regilla*); REPTILES – western fence lizard (*Sceloporus occidentalis*), common side-blotched lizard (*Uta stansburiana*); BIRDS – western scrub-jay (*Aphelocoma californica*), Anna's hummingbird (*Calypte anna*), wrentit (*Chamaea fasciata*), American crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), yellow warbler (*Dendroica petechia*), horned lark (*Eremophila alpestris*), common yellowthroat (*Geothlypis trichas*), yellow-breasted chat (*Icteria virens*), acorn

woodpecker (*Melanerpes formicivorus*), song sparrow (*Melospiza melodia*), northern mockingbird (*Mimus polyglottos*), ash-throated flycatcher (*Myiarchus cinerascens*), phainopepla (*Phainopepla nitens*), Nuttall's woodpecker (*Picoides nuttallii*), California towhee (*Pipilo crissalis*), spotted towhee (*Pipilo maculatus*), California gnatcatcher (*Polioptila californica*), bushtit (*Psaltirparus minimus*), Bewick's wren (*Thryomanes bewickii*), California thrasher (*Toxostoma redivivum*), western kingbird (*Tyrannus verticalis*), Cassin's kingbird (*Tyrannus vociferans*), least Bell's vireo (*Vireo bellii pusillus*); MAMMALS – coyote (*Canis latrans*), striped skunk (*Mephitis mephitis*), woodrat (*Neotoma* spp.), raccoon (*Procyon lotor*), California ground squirrel (*Spermophilus beecheyi*), desert cottontail (*Sylvilagus audubonii*); PLANTS – western ragweed (*Ambrosia psilostachya*), California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), mulefat (*Baccharis salicifolia*), California brittlebush (*Encelia californica*), flat-top buckwheat (*Eriogonum fasciculatum*), toyon (*Heteromeles arbutifolia*), coast live oak (*Quercus agrifolia*), watercress (*Rorippa* spp.), black sage (*Salvia mellifera*), black willow (*Salix gooddingii*), red willow (*Salix laevigata*), arroyo willow (*Salix lasiolepis*), elderberry (*Sambucus nigra*), poison oak (*Toxicodendron diversilobum*); and other riparian/wetland vegetation which provides habitat for those species, and all other aquatic and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish or wildlife resources identified above include: loss of natural bed or bank; change in contour of bed, channel or bank; degradation or aggradation of channel; accelerated channel scour; loss of bank stability during construction; increase of bank erosion during construction; soil compaction or other disturbance to soil layer; increased turbidity; increased sedimentation (chronic or episodic); short-term release of contaminants (e.g., incidental from construction); long-term release of contaminants (e.g., concrete, creosote, wood preservative leachates); loss or decline of riparian and/or emergent marsh habitat; colonization by exotic plant or animal species; loss or decline of instream channel habitat; change to, or loss or decline of natural bed substrate; construction pits and trenches that can capture terrestrial organisms; disruption to nesting birds and other wildlife; direct take of terrestrial species; loss of connection to hyporheic zone; loss or impediment of terrestrial animal species travel routes due to permanent structures; diversion of flow water from, or around, activity site; change in stream flow (Q); and, change in percolation.

The project will impact a maximum of 1.10 acres of stream bed, bank, channel and associated wetland or riparian vegetation. The project will permanently impact a maximum of 1.07 acres of southern willow riparian forest and a maximum of 0.03 acre of ephemeral stream consisting of transitional riparian and/or upland vegetation.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Agreed Work Activities. The agreed work includes activities associated with the Project Location and Project Description described above. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Permittee as a part of Notification of Lake or Streambed Alteration 1600-2014-0005-R5 and shall be implemented as proposed unless directed differently by this Agreement.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

Resource Protection

- 2.1 Construction Area Demarcation. Prior to construction, the authorized construction limits shall be marked in coordination with a qualified biologist. No vegetation shall be removed outside of this marked area and no construction debris, equipment, or soils shall be placed outside of the marked area.
- 2.2 Biological Monitor during Vegetation Removal. Due to the presence of native riparian vegetation, all vegetation clearing shall be conducted under the direct on-site supervision of a qualified biologist.
- 2.3 Biological Monitor during Construction Activities. During construction activities, a qualified biologist shall monitor work areas and adjacent habitat on a daily basis.

The qualified biologist will: (a) document all activities pertaining to biological resources; (b) provide regular updates to Permittee; (c) notify Permittee immediately if unauthorized impacts to biological resources occur; and (d) advise the contractors, as needed, to ensure effective implementation of biological mitigation measures for specific site conditions. Permittee shall make available to CDFW, upon request, the documentation prepared by the biologist.

- 2.4 On-site Education. Permittee shall conduct an education program for all persons employed or otherwise working on the project site prior to performing any work on-site. The program shall consist of a presentation from a qualified biologist that includes a discussion of the biology of the habitats and species identified in this Agreement and present at this site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations and project-specific protective measures included in this Agreement. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site.
- 2.5 Qualified Biologist. For the purposes of this Agreement, a qualified biologist is one who has met all of the following minimum qualifications: (a) bachelor's degree in biological sciences, zoology, botany, ecology, or a closely related field; (b) at least 3 years of experience in field biology or current certification of a nationally recognized biological society; and (c) at least 1 year of field experience with biological resources found in or near the project area. In lieu of the following qualifications, a resume shall demonstrate to the satisfaction of CDFW that the proposed biologist(s) has the appropriate training and background to effectively implement the measures of this Agreement.
- 2.6 Staging Areas. Throughout construction, all equipment storage, equipment maintenance, lighting, and staging, shall occur outside of CDFW jurisdictional habitat except for work sites within areas authorized by this Agreement.
- 2.7 Removal and Disposal of Non-Native Vegetation. Any removed non-native vegetation shall be disposed of legally in a manner which prevents its reestablishment and in a manner that does not negatively affect other sensitive native habitat.
- 2.8 Prohibited Plant Species. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species within or near streams. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: <http://www.cal-ipc.org/paf/>.
- 2.9 Local Plant Material. Plant material for revegetation should be derived from cuttings and/or seeds obtained from randomly selected native trees and shrubs occurring locally within the same drainage. Any plant material for revegetation

which cannot be obtained from local cuttings or collected seeds shall be obtained from a native plant nursery.

- 2.10 Herbicide Mixing. Herbicide mixing sites shall only be located in areas devoid of vegetation, and where there is no potential of a spill reaching a vegetated area or a stream, for example avoid mixing at a storm drain.
- 2.11 Herbicide Use in Aquatic Environment. Any herbicide used where there is the possibility that the herbicide could come into direct contact with water shall be approved for use in an aquatic environment. Great care shall be taken to avoid contact with native vegetation, and herbicide shall only be applied on calm days to prevent airborne transfer.
- 2.12 No Fuel Modification Activities. Vegetation trimming or removal activities for fuel modification purposes are not covered activities under this Agreement. Vegetation trimming or removal for fuel modification purposes shall be subject to separate notification pursuant to FGC section 1600 et seq.
- 2.13 Project Lighting. Lighting required to complete project activities shall not illuminate the stream or adjacent riparian habitat. All temporary or permanent lighting fixtures near any stream shall incorporate shields to direct light away from the bed, bank, or channel of any lake or stream within the project footprint.

Wildlife and Habitat Protection

- 2.14 Protected Species. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a candidate species or species listed as threatened or endangered under the California Endangered Species Act (CESA; Fish & G. Code § 2050 et seq.) and/or Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.); a species identified by CDFW as a species of special concern; or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall occur to any protected species, except as may be authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such impacts.
- 2.15 Avian Nesting Avoidance. If the avian nesting season cannot be avoided and construction or vegetation removal occurs between March 1st to September 15th (January 1st to July 31st for raptors), the restricted time period, a qualified biologist with experience in conducting bird breeding surveys shall conduct a minimum of 3 weekly focused surveys for nesting birds before work, including a survey completed within 3 days prior to the work in the area, to ensure no nesting birds in the project area would be impacted by the project. If an active nest is identified Permittee shall do one of the following to avoid and minimize impacts to nesting birds;

a) Implement a 300 foot minimum avoidance buffers for all passerine bird nests (500 foot for protected species) and 500 foot minimum avoidance buffer for all raptors species. The breeding habitat/nest site shall be fenced and/or flagged in all directions. The nest site area shall not be disturbed until the nest becomes inactive, or, the young have fledged, and the young are no longer being fed by the parents, and the young have left the area, and the young will no longer be impacted by the project.

b) Develop a project specific Nesting Bird Management Plan (NBMP). The site-specific nest protection plan shall be submitted to CDFW prior to commencement of project activities subject to this Agreement within the minimum avoidance buffers described above. The NBMP should include detailed methodologies and definitions to enable a qualified avian biologist to monitor and implement nest-specific buffers based upon the life history of the individual species; species sensitivity to noise, vibration, and general disturbance; individual bird behavior; current site conditions (screening vegetation, topography, etcetera), ambient levels of human activity; the various project-related activities necessary to construct the project, and other features. The NBMP shall be supported by survey documentation including: dates of survey, total field time of survey efforts, map of survey routes, names of investigators, and if any active nests were found. The NBMP shall be submitted to CDFW prior to commencement of project activities subject to this Agreement. If this option is chosen, project activities may not commence until CDFW has acknowledged receipt of survey results and any established buffers. The NBMP shall also be supported by a Nest Log which tracks each nest and its outcome. Each nest identified in the NBMP nest shall be monitored until the nest becomes inactive, including nests that remain active beyond September 15. The Nest Log shall be submitted to CDFW at the end of each week during project activities subject to this Agreement and/or until all nests identified in the NBMP are no longer active.

c) Permittee may propose an alternative plan for avoidance of nesting birds for CDFW concurrence.

- 2.16 Leave Wildlife Unharmd. If any life stage of any wildlife (invertebrate, amphibian, reptile, mammal, or bird) is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmd. A qualified biologist may also relocate non-protected species (see Measure 2.14) out of harm's way to appropriate avoided habitat immediately adjacent to the project site. Exclusionary devices shall be erected to prevent the migration into or the return of species into the work site. If any protected wildlife is encountered, Permittee shall immediately inform CDFW of the observation and additional measures taken to ensure the safety of the wildlife.
- 2.17 Eliminate Trench Hazards. At the end of each work day, an escape ramp shall be placed at each end of any open trench or excavated pit to allow any animals that may have become entrapped in the trench or excavated pit to climb out

overnight. The ramp may be constructed of earthen fill, wood planking or other suitable material that is placed at an angle no greater than 30 degrees. If an escape ramp is not feasible, other appropriate wildlife exclusionary devices shall be employed to avoid entrapping wildlife.

- 2.18 Eliminate Pipe Hazards. All sections of pipe shall be visually checked for the presence of wildlife sheltering within them prior to the pipe sections being placed in a trench and attached together, or shall have the ends capped while stored on site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.

Dewatering and Temporary Diversions

- 2.19 No Equipment in Wetted Portion of the Stream. No equipment shall be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by CDFW. Permittee shall obtain written approval of the temporary diversion plan from the CDFW prior to commencement of project activities subject to this Agreement.
- 2.20 Maintain Flows. Flow diversions shall be accomplished in a manner that shall prevent pollution and/or siltation and which shall provide flows to downstream reaches. Flows to downstream reaches shall be provided during all times that the natural flow would have supported aquatic life. Said flows shall be sufficient quality and quantity, and of appropriate temperature to support aquatic life both above and below the diversion. Normal flows shall be restored to affected stream immediately upon completion of work at that location.
- 2.21 Excavation Dewatering. If an excavation site must be dewatered, any muddy, or otherwise contaminated, water shall be pumped into a holding facility or into a settling pond located in flat stable areas outside of the stream channel or pumped up on a stable grassy area where the water clears prior to flowing back into the stream.

Equipment and Access

- 2.22 Access Roads. Disturbance, removal or trimming of vegetation for equipment access and construction shall not exceed the impact limits reviewed by CDFW.
- 2.23 Speed Limit. A 15-mile per hour speed limit shall be observed on dirt access roads to reduce dust and allow reptiles and small mammals to disperse.
- 2.24 Invasive Species. Permittee shall conduct project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including

plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one project site and/or waterbody to another. Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.

- 2.25 Inspection and Cleaning of All Project Equipment. Permittee shall inspect all vehicles, tools, waders and boots, and other project-related equipment and remove all visible soil/mud, plant materials, and animal remnants prior to entering and exiting the project site and/or between each use in different waterbodies.

Fill and Spoil

- 2.26 Location of Spoil Sites. Spoil sites shall not be located within the stream or locations that may be subjected to high storm flows, where spoil may be washed into the stream, or where it may impact streambed habitat or riparian vegetation.
- 2.27 Cover Spoil Piles. Permittee shall have readily available plastic sheeting to cover exposed spoil piles and exposed areas in order to prevent loose soil from moving into the stream. These covering materials shall be applied when it is evident rainy conditions threaten to erode loose soils into the stream.

Structures

- 2.28 Final Construction Plans. At least 60 days prior to commencement of project activities subject to this Agreement, Permittee shall submit final construction plans of structures proposed in the stream to CDFW. No structures beyond the location, size, and materials described in the final construction plans are authorized as a part of this Agreement.
- 2.29 Remove Structures Before High Water Flow. Structures and associated materials not designed to withstand high surface water flows shall be moved to areas above high water before such flows occur.

Erosion, Turbidity, and Siltation

- 2.30 Minimize Turbidity and Siltation. Permittee shall take precautions to minimize turbidity/siltation during construction and post-construction periods. Precautions shall include, but are not limited to: pre-construction planning to identify site specific turbidity and siltation minimization measures and best management erosion control practices; best management erosion control practices during project activity; and settling, filtering, or otherwise treating silty and turbid water prior to discharge into a stream or storm drain.

- 2.31 Erosion Control Monitoring. Permittee shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.

Pollution, Litter, and Clean-Up

- 2.32 Litter and Pollution. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Permittee to ensure compliance.
- 2.33 Secure Trash Receptacles. Permittee shall use fully covered trash receptacles with secure lids (wildlife proof) to contain all food, food scraps, food wrappers, beverage and other miscellaneous trash.
- 2.34 Stationary Equipment. Stationary equipment such as motors, pumps, generators, and welders located within or near the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.35 Equipment Maintenance and Fueling. No equipment maintenance or fueling shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas.
- 2.36 Equipment and Vehicle Spills and Contaminants. Any equipment or vehicles driven or operated within or near the stream shall be checked daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Permittee shall maintain all vehicles and equipment in proper working condition to minimize fugitive emissions and accidental spills from motor oil, antifreeze, hydraulic fluid, grease, and other fluids or hazardous materials. All fuel or hazardous waste leaks, spills, or releases shall be stopped or repaired immediately and cleaned up at the time of occurrence. Permittee shall be responsible for spill material removal and disposal to an approved offsite landfill and spill reporting to the permitting agencies. Service construction equipment shall be stored at designated areas only. Maintenance vehicles shall carry appropriate equipment and materials to isolate and remediate leaks or spills. A spill containment kit shall be available on site for all maintenance activities.
- 2.37 Site Cleanup. When operations are completed, any excess materials or debris shall be removed from the work area.

3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

- 3.1 Mitigation for Authorized Permanent Impacts. Mitigation for authorized permanent impacts shall be accomplished according to the *Final Compensatory Habitat Mitigation and Monitoring Plan for the Lake Forest Civic Center Project*, submitted to CDFW and dated July 2015 (HMMP), unless otherwise noted in this Agreement. As described in the HMMP, Permittee shall create a minimum of 0.56 acre southern willow riparian forest on-site, enhance a minimum of 0.5 acre of southern willow riparian forest within the on-site 0.91-acre preservation area, and enhance 1.0 acre of stream habitat through the purchase of credit at a CDFW-approved mitigation bank. Permittee shall notify CDFW of any modifications made to the project plans submitted to CDFW. At the discretion of CDFW, minor plan modifications may require an amendment to this Agreement. At the discretion of CDFW, if substantial changes are made to the original plans this Agreement becomes void and Permittee must submit a new Notification.
- 3.2 Mitigation Implementation Timing. All compensatory mitigation shall be initiated by the first April following initial project impacts subject to this Agreement. Delay in the initiation of compensatory mitigation will require an amendment to this Agreement and may require additional mitigation to mitigate the added temporal loss of stream habitat function.
- 3.3 Restoration Maintenance and Monitoring. In general, restoration of habitat shall be maintained and monitored for 5 years after installation or until established success criteria identified in the restoration plan (HMMP) and this Agreement are met by an experienced, licensed habitat restoration contractor. Maintenance, monitoring, and reporting shall be conducted following a prescribed schedule to assess progress and identify potential problems with the restoration. Remedial action (e.g., additional planting, weeding, erosion control, use of container stock, supplemental watering, etc.) shall be taken by an experienced, licensed habitat restoration contractor during the maintenance and monitoring period if necessary to ensure the success of the restoration. If the restoration fails to meet the established success criteria after the maintenance and monitoring period, maintenance and monitoring will extend beyond the 5-year period until the criteria are met or unless otherwise approved in writing by CDFW.
- 3.4 Restoration Success Criteria. All restoration planting shall have a minimum of 80% survival the first year, 95% the second year, and 100% survival thereafter, unless replaced by natural recruitment. Restoration planting areas shall attain 75% cover of native woody perennials after 3 years and 90% cover of native woody perennials after 5 years. At the completion of the monitoring period, the restoration site shall have received no supplemental watering for a period of 2 consecutive years; the site shall have a species richness of at least 15 native species, divided between annuals and perennials; nonnative plants shall not make up more than 5% of the entire cover of the site; no more than 5% of the site shall consist of bare ground; the site shall be free of invasive exotic plant species; and there shall be no trash or human generated debris.

- 3.5 Habitat Conservation. All habitat mitigation areas and avoided stream habitat shall be placed within a perpetual biological Conservation Easement or other type of formal Deed Restriction that meets the legal definition of a Conservation Easement (Civil Code Sections 815.1 and 815.2). Permittee shall submit a draft Conservation Easement or Deed Restriction for CDFW approval at least 60 days prior to its execution and initiation of impacts authorized under this Agreement. Permittee shall submit the final Conservation Easement or Deed Restriction and evidence of its recordation to CDFW. The document shall adequately demonstrate that the mitigation site will be maintained for biological value conservation without future development or encroachment on the site that could otherwise reduce the functions and values for wildlife resources. The Conservation Easement or Deed Restriction shall prohibit all residential, commercial, industrial, institutional, and transportation development. The Conservation Easement or Deed Restriction shall clearly state that no new rights or easements shall be granted within the conserved area, except as approved by CDFW. New infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, trails, and areas of maintained landscaping for recreation, excepting any prior rights under previously recorded easements.
- 3.6 Long-Term Habitat Management Plan. Permittee shall submit a draft Habitat Management Plan (HMP) that clearly describes management and maintenance activities to retain habitat value for fish and wildlife resources in the project area in perpetuity. The draft HMP shall be submitted to CDFW at least 60 days prior to prior to commencement of project activities subject to this Agreement. The plan shall include at a minimum: measures to maintain the vegetation success criteria identified in this Agreement in perpetuity; regular inspection for, and removal of, trash and other human generated waste; other management activities, as needed, to retain habitat for fish and wildlife resources; and evidence of an appropriate funding mechanism which will fund the perpetual management of the mitigation site and avoided stream habitat.
- 3.7 Mitigation Bank Credit Bill of Sale. As a component of the compensatory mitigation, Permittee has proposed to purchase 1.00 Perennial Riparian Restoration Credit (Credit) as identified in the Final Bank Enabling Instrument for the Soquel Canyon Mitigation Bank. Permittee shall submit a bill of sale verifying the purchase of 1.00 Credit prior to commencement of project activities subject to this Agreement. Permittee shall notify CDFW of any modifications made to proposed mitigation bank credit purchase. At the discretion of CDFW, minor modifications may require an amendment to this Agreement. At the discretion of CDFW, if substantial changes are made this Agreement becomes void and Permittee must submit a new Notification.
- 3.8 Mitigation for Unauthorized Impacts. Permittee shall mitigate at a minimum 5:1 ratio for impacts beyond those authorized in this Agreement. In the event that

additional mitigation is required, the type of mitigation shall be determined by CDFW, and may include creation/establishment, enhancement and/or re-establishment.

- 3.9 Release of Mitigation Obligations. Permittee shall not be released from these maintenance and monitoring obligations until such time as Permittee has requested and received written concurrence from CDFW that the success criteria and securities identified in this Agreement have been met.

4. Reporting Measures

Permittee shall meet each reporting requirement described below. Permittee shall submit reporting measures to CDFW's South Coast Office at the address on page 1, ATTN: Streambed Alteration Program – SAA # 1600-2014-0005-R5 or alternatively by electronic mail to R5LSACompliance@wildlife.ca.gov.

- 4.1 Notification Prior to Work. Permittee shall notify CDFW, in writing, at least 5 days prior to initiation of construction (project) activities and at least 5 days prior to completion of construction (project) activities.
- 4.2 Mitigation Installation Report. Permittee shall submit a report to CDFW, within 45 days after finalizing the replanting effort, acknowledging the completion of the replanting site and documenting its as-built status. The report shall be submitted with electronic geographic information system (GIS) shapefiles (along with the appropriate metadata) of the avoided stream and mitigation areas.
- 4.3 Annual Mitigation, Maintenance and Monitoring Reports. Mitigation, maintenance, and monitoring reports shall be submitted annually to CDFW during the maintenance and monitoring period until mitigation has been deemed physically and functionally successful by CDFW. Annual reports shall include at a minimum: (a) maps identifying monitoring areas, transect locations, and planting zones; (b) a list of names and companies of all persons who prepared content of the annual report or participated in monitoring activities; (c) photographs taken from established photopoints; (d) survival, percentage cover, and height of planted/seeded species; (e) percentage cover of non-native vegetation; (f) the number, by species, of plants replaced; and (g) recommended remedial maintenance.
- 4.4 Sensitive Species Observations. Permittee shall be responsible for reporting all observations of threatened/endangered species or species of special concern to CDFW's Natural Diversity Data Base (CNDDDB) within 60 days of the sighting. The form and instructions for completing the form and submitting the information are available on-line at http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp. In addition to sending the information to CNDDDB a copy should be sent to CDFW's South Coast Office, ATTN: Streambed Alteration Program – SAA #1600-2014-0005-R5.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

City of Lake Forest
Debra Rose
25550 Commercentre Drive, Suite 100
Lake Forest, California 92630
drose@lakeforestca.gov

To CDFW:

California Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, California 92123
Attn: Lake and Streambed Alteration Program
Notification #1600-2014-0005-R5

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration Agreement" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on November 30, 2020, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Exhibit A. "Lake Forest Civic Center; Impacts"

Exhibit B. "Lake Forest Civic Center; Mitigation Types"

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF LAKE FOREST



Debra Rose

Assistant City Manager



Date

FOR DEPARTMENT OF FISH AND WILDLIFE

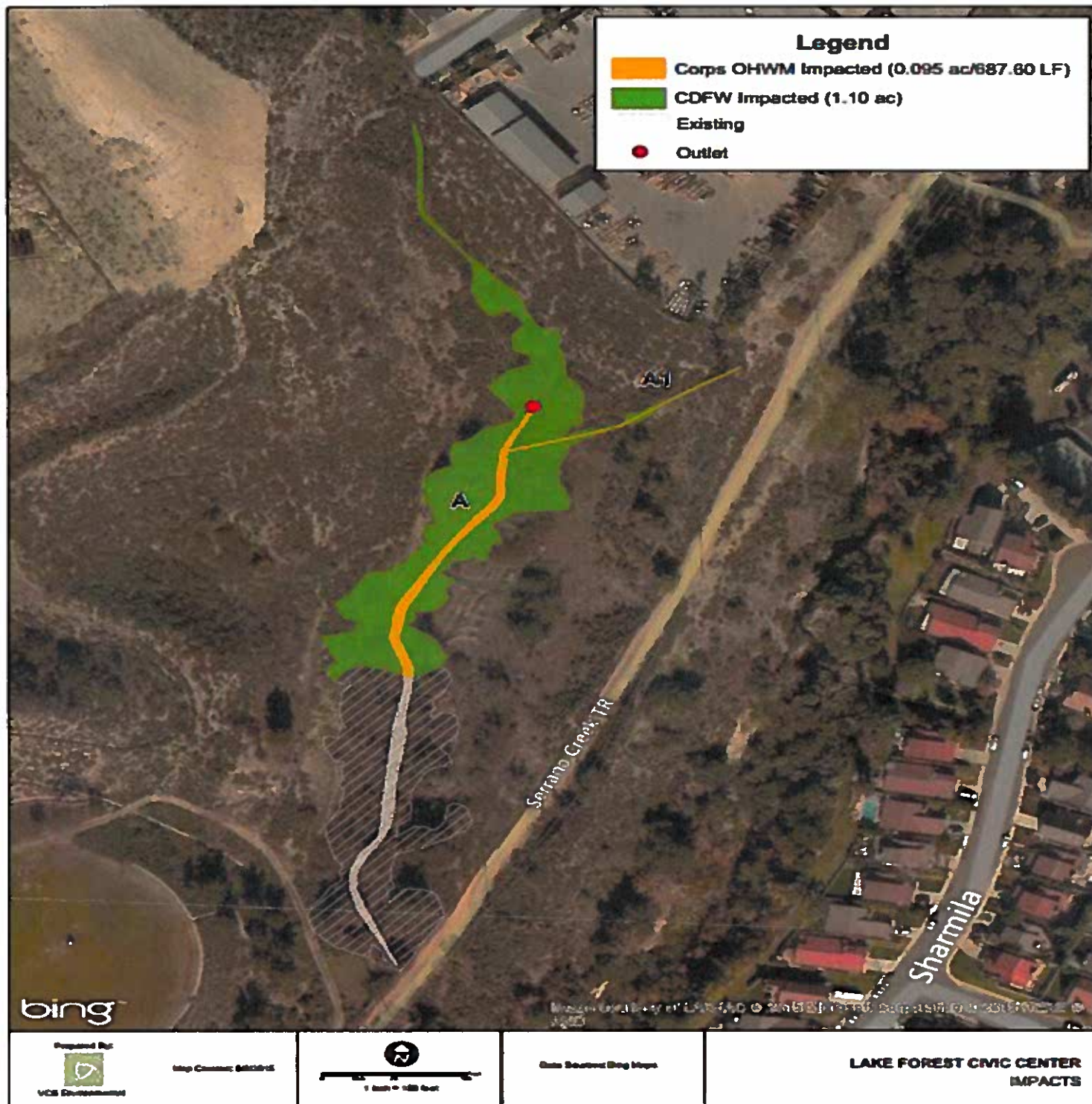


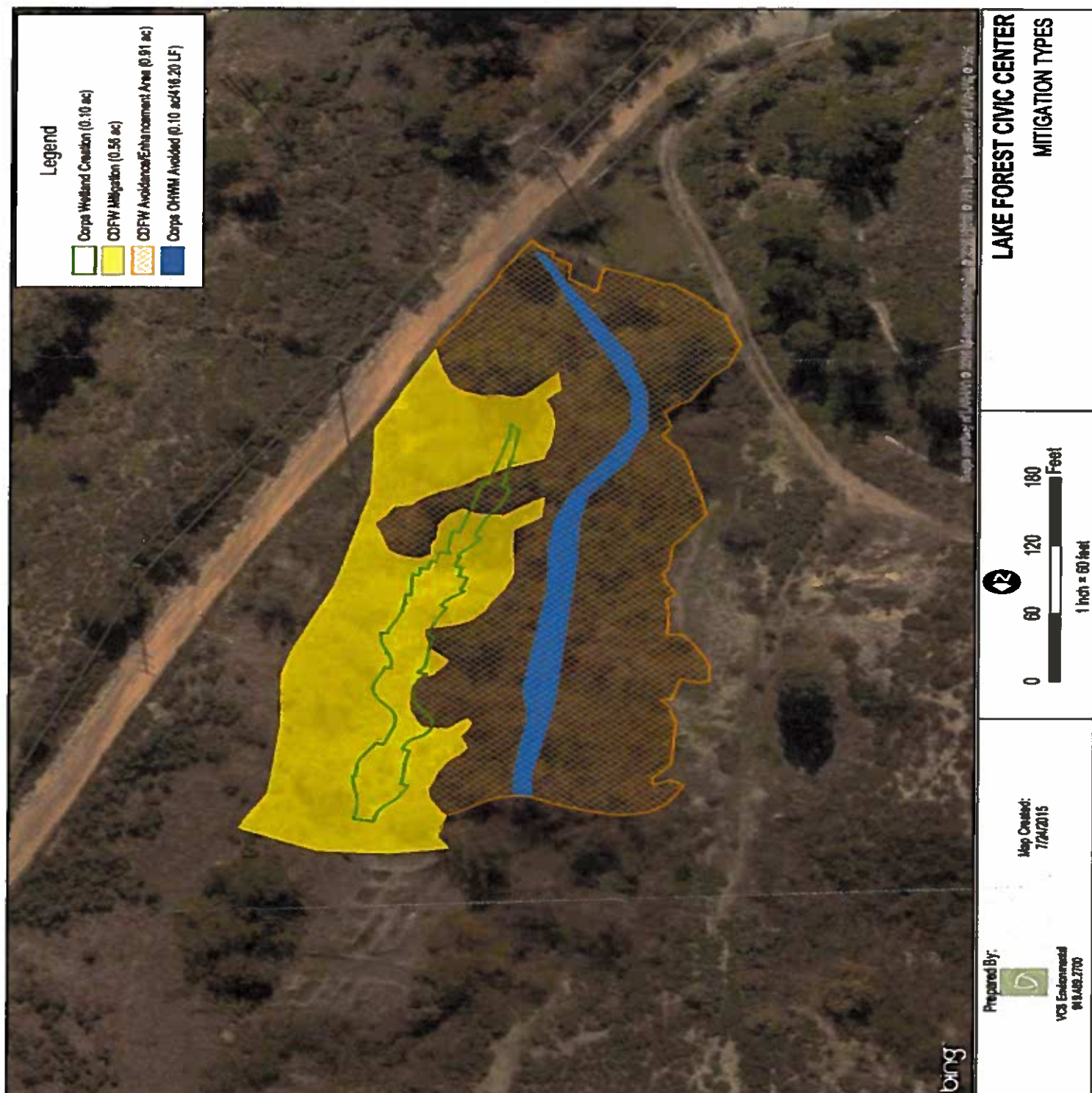
Gail K. Sevens

Environmental Program Manager



Date





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